OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 6 April 2000 *

1. The present infringement action was commenced by the Commission under Article 169 of the EC Treaty (now Article 226 EC) in respect of the non-implementation by the Hellenic Republic of two provisions of Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [1] (hereinafter 'the Directive'). The provisions in question are Articles 3(ii) and 4 of the Directive.

2. Article 3(ii) of the Directive provides that the customs authorities of the Member States must not permit the entry of products into the Community unless proof is supplied that the prescribed veterinary checks have been paid for and that, where relevant, a deposit covering any additional costs has been lodged. Article 4(1) of the Directive provides that every consignment of products from a third country shall be subjected to documentary and identity checks in order to verify its origin and its subsequent destination and that the particulars it contains satisfy the relevant Community or national rules. Article 4(2) to (6) lays down additional rules regarding the application of paragraph (1). Article 4(7) states that all expenditure incurred by the application of that article shall be chargeable to the consignor, the consignee or their agent, without reimbursement by the Member State. Article 32 of the Directive provides for its transposition into national law by 31 December 1991 at the latest.

3. It is not disputed that Greece implemented the major part of the Directive by Presidential Decree No 420/93. [2] However, this Decree contains no provision regarding the recovery of inspection fees in accordance with Articles 3(ii) and 4(7) of the Directive. The Commission raised this lacuna in a letter of formal notice of 27 December 1996. In their reply of 14 March 1997, the Greek authorities stated that they had prepared a draft amendment of this Decree which would permit the Minister for Agriculture to fix the appropriate fees by order. The Com-

* Original language: English.

1 — OJ 1990 L 373, p. 1.

2 — *Official Journal of the Hellenic Republic* A, 179.

mission received no further information about the adoption of the draft amendment and addressed a reasoned opinion to Greece on 13 March 1998, inviting it to adopt the necessary measures to comply with Articles 3(ii) and 4 of the Directive within two months. Greece did not reply to the reasoned opinion.

4. The Commission seised the Court on 18 December 1998, requesting that it declare that the Hellenic Republic was in breach of its obligations under the Treaty and the Directive by virtue of its failure to take the necessary measures in the period prescribed to ensure that the expenses occasioned by veterinary and administrative checks were assumed by the consignor or consignee of the products, or their agent.

5. It emerges from Greece's pleadings that the Simvoulio tis Epikratias (Council of State) rejected the draft amendment mentioned above as defective from the point of view of legislative technique. [3] Greece states that the Ministry of Agriculture is preparing another draft provision as part of the process of transposition of Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC. [4] This draft Decree will shortly be submitted for examination by the Simvoulio tis Epikratias before adoption.

6. It is apparent from the foregoing that the Greek authorities have not yet complied with their obligation under Articles 3(ii) and 4 of the Directive to pass on the costs of veterinary and administrative checks to the consignors or consignees of third-country products, or their agents. Furthermore, difficulties in implementing Community obligations which arise from a Member State's own internal legal system are not an excuse for non-compliance with those obligations after the end of the prescribed implementation period. [5]

3 — Report No 273, 17 June 1997.

4 — OJ 1996 L 162, p. 1.

5 — See, for example, Case C-259/94 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5; Case C-326/97 *Commission* v *Belgium* [1998] ECR I-6107, paragraph 7.

Conclusion

7. As a result, I recommend that the Court:

(1) Declare that the Hellenic Republic is in breach of its obligations under the Treaty and under Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, by virtue of its failure to implement, by the end of the prescribed period, the measures necessary to ensure the recovery of the cost of veterinary and administrative checks from the consignors or consignees of third-country products, or their agents, as required by Articles 3(ii) and 4 of that Directive;

(2) Order the Hellenic Republic to pay the costs of these proceedings.